



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1998

Ms. Rita Rodriguez
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-1659

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116656.

The City of El Paso (the "city") received an open records request for, among other things, "[t]he report from (and related documents regarding) Bath Engineering's assessment of the Sun Metro maintenance facility" (the "facility") and the "most current draft of items under consideration for an upcoming bond election." You state that you have released to the requestor portions of the requested report and minutes of a meeting between city officials and Bath Engineering. You seek to withhold the remaining portions of these documents pursuant to section 552.111 of the Government Code.

Section 552.111 of the Government Code excepts inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

You explain that the requested report was prepared for the city by an outside consultant for a review of the facility and

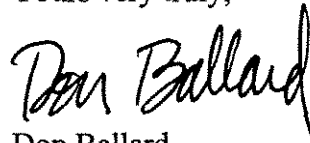
the effect of the conversion on the City's mass transit system from gasoline and diesel operated buses to a liquefied natural gas (LNG) and compressed natural gas (CNG) system. This report was requested as part of the City's policymaking process to determine the effects of such conversion on the use of the Sun Metro Maintenance Facility.

After reviewing the report, we do not believe that the information at issue pertains to the formulation of city policy, but rather to a purely administrative matter. As noted in the report, the city has already elected to use LNG and CNG vehicles. The report merely makes recommendations as to the modifications the city must make to the facility in order to safely accommodate the maintenance of those vehicles. The city therefore may not withhold any portion of the report or of the meeting minutes pursuant to section 552.111.

As noted above, you also seek to withhold pursuant to section 552.111 a draft document outlining items the city is considering for an upcoming bond election. In Open Records Decision No. 559 (1990), this office held that a preliminary draft of a document that is intended for release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such may be withheld pursuant to the predecessor of section 552.111. This document directly pertains to a policy matter currently before the city. We therefore conclude that the city may withhold this document at this time pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

Ref.: ID# 116656

Enclosures: Marked documents

cc: Mr. Patrick C. McDonnell
 City Hall Reporter
 El Paso Times
 P.O. Box 20
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 (w/o enclosures)